



October 1, 2002

Mr. Matthew L. Wade
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2002-5520

Dear Mr. Wade:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170056.

The City of Lubbock (the “city”) received a request for information relating to a named individual’s utility bills. The city claims that the requested information is excepted from disclosure under section 552.133 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.¹

Section 552.133 of the Government Code excepts from public disclosure information held by a public power utility that is related to a competitive matter. *See* Gov’t Code § 552.133(b). Section 552.133 defines “competitive matter” as a matter that the public power utility governing body in good faith determines by vote to be related to the public power utility’s competitive activity. *Id.* § 552.133(a)(3). The governing body also must determine, in like manner, that the release of the information would give an advantage to competitors or prospective competitors. *Id.* Section 552.133(a)(3) lists thirteen categories of information that may not be deemed to be competitive matters. The attorney general may conclude that section 552.133 is inapplicable to the information at issue only if, based on the information provided, the attorney general determines that the public power utility governing

¹The city also informs us that the individual to whom the requested information pertains was notified of this request for information. We have received no correspondence from that individual. *See* Gov’t Code § 552.305(d); Open Records Decision No. 542 (1990).

body has not acted in good faith in determining that the issue, matter, or activity is a competitive matter or that the information requested is not reasonably related to a competitive matter. *Id.* § 552.133(c). Furthermore, section 552.133(b) provides as follows:

Information or records are excepted from [required public disclosure] if the information or records are reasonably related to a competitive matter, as defined in this section. Excepted information or records include the text of any resolution of the public power utility governing body determining which issues, activities, or matters constitute competitive matters. Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiply certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter.

The city informs us that the city council, as governing body of a public power utility, adopted Resolution 6559 pursuant to section 552.133 on October 14, 1999. The city states that the resolution defines competitive matters for the purpose of protecting the competitive position of the city's municipally owned electric utility, Lubbock Power & Light. The city explains that the resolution defines customer lists or identification data, consumption data, or rate/billing/account data as a competitive matter to be protected from public disclosure. The city states that the requested information relates to the commercial and residential utility bill records of a customer of Lubbock Power & Light. The city asserts that the requested information thus relates to a competitive matter, as defined by the resolution, and therefore is excepted from disclosure. We note that the information at issue is not clearly among the thirteen categories of information that are expressly excluded from the definition of competitive matter. Furthermore, we have no evidence that the city failed to act in good faith in adopting Resolution 6559. *See* Gov't Code § 552.133(a)(3), (c). Therefore, based on the city's representations, the resolution, and our review of the requested information, we agree that this information is excepted from disclosure under section 552.133 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

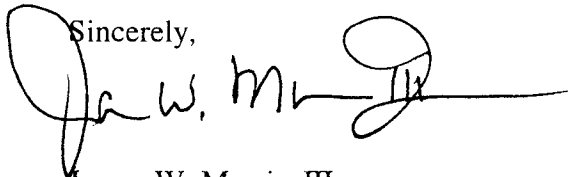
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 170056

Enc: Submitted documents

c: Mr. Mel Tittle
Managing Editor
Lubbock Avalanche-Journal
P.O. Box 491
Lubbock, Texas 79408
(w/o enclosures)